IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 608 of 2005

Sanjay Birsingh Kshatriya... Petitioner

V/s

1. Shri A.N.Roy,
Commissioner of Police,Br.Mumbai

2. The State of Maharashtra

3. Superintendent of Jail,
Nasik Road Central Jail,Nashik .. Respondents

Shri Kuldip S. Patil for Petitioner

Shri Satish Borulkar,PP for Respondents

CORAM:S.B.MHASE &

S.R.SATHE,JJ

DATED:9th September 2005

ORAL JUDGMENT :- (Per S.R.Sathe,J.)

1. By this petition under Article 226 of the Constitution of India, the Petitioner detenu has taken exception to the order of detention passed by Respondent no.1 on 8-12-2004 in exercise of powers conferred by Section 3 of the Maharashtra Prevention of Dangerous

Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for the sake of convenience hereinafter referred to as the "said Act").

2. The impugned order of detention is passed on the basis of two Criminal Cases registered against detenu and two in-camera statements.

3. On 10-3-2004 one Pradeep Bhaurao Jadhav filed a complaint against the present detenu and his unknown associates alleging that they committed robbery and assaulted the complainant. On the basis of the said complaint an offence was registered at CR No.85 of 2004 against the present detenu and his unknown associates for the offences punishable under Sections 394, 397, 34 of IPC read with 34(a)(i) Bombay Police Act. In connection with the said C.R. detenu was arrested on 11-3-2004. The detenu preferred bail application and he was ordered to be released on bail on furnishing P.R bond of Rs.15,000/- and a solvent surety of like amount. The detenu availed the bail on 18-4-2004. In fact he could not furnish solvent surety and as per directions of the Court he was released on cash deposit of Rs.15,000/- with further direction to furnish solvent surety within four weeks.

4. On 30-5-2004 one Shankar Raju Dhotre filed a complaint at Dahisar Police Station against the detenu and his unknown associates and it was registered at CR

No.176 of 2004, for the offences punishable under Section 324, 326, 504 read with 34 IPC. In that CR also the detenu was released on PR bond of Rs.5,000/- with one surety of like amount and bail was availed on 19-6-2004 by the detenu.

5. During the confidential enquiries made by the police, it was revealed that number of people had suffered at the hands of detenu and his associates but as they were weapon wielding dangerous desperadoes, nobody was willing to complain against them openly due to fear of retaliation. However, on getting assurance that their names and identify would not be disclosed and they would not be called upon to give evidence in any Court. Their in-camera statements were recorded. The statement of witness A was recorded on 26-8-2004, wherein he referred the incident which had occurred in the first week of July 2004 at Kajupada. Statement of witness B was on 27-8-2004 wherein he also referred an incident occurred in the fourth week of July 2004. All those incidents were regarding the detenu's activities of wielding dangerous weapons, extortion etc. Having regard to all the above mentioned material placed before him, the Commissioner of Police, Greater Mumbai was subjectively satisfied that Petitioner was carrying on activities prejudicial to the public order. He therefore passed the order of detention against the Petitioner on 8-10-2004. The said order was served with the grounds of detention on detenu on 16-102-2004 when

he was on bail in respect of earlier two CRs. The detenu made representation but the same was rejected and the order of rejection was communicated to detenu on 18-11-2004. A reference made under Section 10 of the said Act dated 26-10-2004 was considered and rejected by the Advisory Board on 23-11-2004. The Additional Chief Secretary (Home), informed the detenu about the rejection of his representation.

6. Being aggrieved by the above mentioned detention order, the detenu has filed the preset petition and challenged the detention order on various grounds. However, at the time of hearing Shri K.S.Patil, learned Advocate for the Petitioner has pressed only two grounds. Shri Patil submitted that though the detenu was supplied with Marathi translation of English documents referred in CR No.85 of 2004 and relied upon by the detaining authority, the said translation was not faithful, proper and correct and as a result of the same the right of the detenu to make an effective representation under Article 22(5) of Constitution of India is impaired. For this purpose, he has drawn our attention to the Medical Certificate of Pradeep Jadhav dated 14-6-2004 wherein the injuries were described as under :-

1) Incise wound 5xm x 2 cm x 1/4 cm (L) anterior chest 0 simple 2) 5 linear dermabraions over posterior aspect of chest - 10 cm x 1/8 cm each -

simple.

and its Marathi translation provided to the detenu is as under :-

In fact in the original certificate medical officer has not mentioned that injury was due to blow by knife. So there was defect in the translation to that effect.

7. Similarly he has brought to our notice the Medical Certificate of Shankar Dhotre dated 2-6-2004 wherein the injuries are described as follows :-

1) # L/3 caused by blunt hard object grievous injury
2) (L) # fibula with # lower pole patella - caused by blunt hard object - grievous injury

and its Marathi translation provided to the detenu is as under :

Thus the portion where injury no.1 was noticed is not mentioned in Marathi translation. The translation of words ‘blunt hard object’ is also not proper.

8. He has also pointed out the Marathi translation of Medical Certificate of Hanmant Wadari.In original certificate the injuries are described as under :

O/E : GCF/CONSC/TPRD P: 80/mm
Pupils (n) BERC BP 120/70 mm.

L/E : fresh CLW over lower lip 1 cm x 1/4 x 1/4
Swelling of lower lip.
bleeding +

While in Marathi it is translated as under :-

9. The bare reading of the above translations of 3 injury certificates and its Marathi translation clearly indicate that translation is not true and correct and even injuries which were in fact not mentioned in the original English Medical Certificate are appearing in Marathi translation.

. In view of the language used in Article 22(5) of Constitution of India now it is well settled that the copies of documents on which the grounds of detention

are founded must be supplied to the detenu. It is also well settled that if the documents which are to be supplied to the detenu are in the language not known to the detenu then the correct translation of the said documents has to be provided to the detenu and if this is not done then it certainly affects the fundamental right of detenu provided under Article 22(5) of the Constitution of India. For this purpose useful reference can be made to a case **Mohd. Rafique Abdul Majid V/s R.H.Mendonca and Ors. (2000(2) Mh.L.J.** wherein the Division bench of this High Court has observed :

> "Hindi translation of the injury report not complete and faithful of original injury report which was in English the detenu's right to make an effective representation under Article 22(5) is impaired."

In the instant case, a feeble attempt is made on behalf of the Respondent no.1 by pointing out that detenu in the instant case has studied upto 10th standard and as such he knows English. So, it was in fact not necessary to give translation and even if there are some mistakes in Marathi translation that would not cause any prejudice to the detenu. However,it must be noted that the stand of Respondent No.1 in this behalf is not consistent. In the first Affidavit in Reply dated 24.5.2005, the Respondent No.1 has stated that as the detenue was not knowing English the documents were

required to be translated in marathi. While in the second reply affidavit filed on 30.8.2005 the Respondent No.1 has stated that the detenue is studied upto 10th standard and therefore he can very well read and understand English and as such even if there are discrepancies in the marathi translation, the same cannot be said to have deprived the detenue of his right to make effective representation. However, it is needless to say that so far as Medical Certificates, which are in English are concerned, even a graduate person may not be in a position to know the correct meaning of the words or language used in the medical certificate. So, merely because the detenu has passed 10th standard examination it cannot be said that no prejudice would be caused to the detenu or that it has in fact not affected the fundamental right of the detenu. Admittedly, the detaining authority had placed reliance on CR Nos.85 of 2004 and 176/2004, naturally, it was obligatory on their part to make available all necessary and relevant documents of said C.Rs and consequently to give correct translation of the same to the detenu. As correct translation is not provided, there is certainly grave infirmity in this behalf and it has affected detenu's right to make an effective representation under Section 22(5) of Constitution of India.

10. Shri Kuldeep Patil, learned Advocate for the detenu has also canvassed before us that though detenu was

provided with operative portion of the bail order the entire bail order passed in the above mentioned CR was not provided to him and that has also affected his right under Article 22(5) of Constitution of India. The learned Advocate for the Petitioner further pointed out that copy of bail order which was provided to the detenu clearly mentions "Heard, for the reasons separately recorded (will follow) the following order is passed "the accused be released on bail of furnishing PR bond of Rs.15,000/- and a solvent surety of like amount....". As the detaining authority had given importance to the earlier CR and also made it a ground for detention, it was necessary for the detaining authority to provide the entire bail order (with reasons) and not only operative order to the detenu. Admittedly, it was not provided. Shri Patil has therefore relied on a case **Sameer Suleman Shama V/s State of Maharashtra and Ors. 1997(1) Mh.L.J.** wherein Division Bench of this High Court has observed that order granting bail is a vital in detention matter and non supply of copy of order granting bail to detenu vitiates order of detention as it violates fundamental, right guaranteed under Article 22(5) of the Constitution.

11. In order to meet out the argument in respect of above lacuna, Shri Borulkar, learned P.P. argued before us that in the instant case it was in fact necessary for the Petitioner or his Advocate to place on record the copy of entire bail order and then to point out as to

how non supply of such copy of the bail order has in fact affected the fundamental right of the detenu. For this purpose he has drawn our attention to a case **Smt.Sharifa Abubaker Zariwala Vs The Union of India and Ors. - 1997 ALL MR (CRI) 528** wherein the Division Bench of this Court has observed:

> **"**Non placement of every material does not vitiate the satisfaction recorded by the Detaining authority. It is only the non-placement and non-consideration of material which is vital for recording subjective satisfaction which vitiates the satisfaction recorded. Therefore, an enquiry has necessarily to be held by the Court as to whether the material which has been withheld or not placed or not considered is vital from the point of view of recording of the satisfaction.**"**

The above proposition is not disputed and cannot be disputed. However, at the same time there is nothing in this decision as a result of which it can be said that the Petitioner is always under an obligation to place such material and then point out as to how non supply of the said material has affected his right. We cannot ignore the fact that in the detention order admittedly there was a reliance on the CR and it was also mentioned

that detenu was released on bail in the said CR. Naturally, what points were considered by the Court while releasing him on bail were vital and the detaining authority was bound to consider the same. So, under such circumstances it was in fact necessary for the detaining authority to look into the reasons recorded by the concerned Court while releasing the detenu on bail in the above mentioned CR. However, it appears that the detaining authority did not apply its mind in respect of this point on such lines. Not only that but detenu was also not provided with the entire bail order (including reasons) and it has affected the detenu's right to make effective representation.

12. In view of above, we have no hesitation to hold that first two grounds mentioned in the detention order can not be said to be legal, valid and consequently, the order of detention on those grounds cannot be upheld as the detenu's right to make effective representation in respect of those grounds was impaired. Naturally, the question arises whether the detention order dated 8-10-2004 is to be quashed and detenu is to be released or whether it is necessary to see as to whether other two grounds on which also the detention order is based survive or not and if the same are legal and valid then to refuse to quash the detention order. Relying on Section 5A of the said Act, Shri Borulkar, learned PP strenuously argued before us that when detention order is based on several grounds then each ground has to be

considered independently holding that there are as many orders of detention, as there are grounds. So, merely because it appears that the order passed on a particular ground is not legal or valid, entire order cannot be thrown over board, without considering whether the order can be sustained on other grounds. As against this, Shri K.S.Patil, learned Advocate for the Petitioner vehemently argued that even if the order of detention is held to be vitiated on any one of the grounds as a result of breach of fundamental right of detenu in that behalf, the entire order has to be quashed. It is therefore first necessary to see what said Section says. It runs as follows :-

> 5A Where a person has been detained in pursuance of an order of detention under section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such ground: and accordingly -
>
> a) Such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are -
>
> i) Vague,
>
> ii) Non existent,
>
> iii) Not relevant
>
> iv) Not connected or not proximately connected with such person, or
>
> v) Invalid for any other reason whatsoever, and it is not, therefore, possible to hold that the State Government or an officer mentioned in sub-section (2) of section 3 making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;
>
> b)The State Government or such officer making the order of detention shall be

> deemed to have made the order of detention under the said section 3 after being satisfied as provided in that section with reference to the remaining ground or grounds."

13. The bare reading of the above mentioned Section establishes that the Section in general and clause 5A(a)(v) is meant to include within the sweep of the provision each and every variety of grounds of invalidity. The plain meaning of this provision is that even if one or more of the grounds fail on the ground of non supply of documents thereby infringing Article 22(5) of Constitution , the said infringement will not invalidate the entire order, if it can be sustained on the basis of remaining grounds, wherein the Constitutional requirements of Article 22(5) are complied with. This has been so held by the Division bench of this court in a case **Rajesh R. Khushalani v Mahendra** P**rasad, Criminal Writ Petition No.1412 of 1991** with Criminal Writ Petition No.1448 of 1991 decided in April, 1992. The same view has been reiterated by the Division Bench of this court in a case **Prabhakar Menka Shetty V/s S.Ramamurthy, Commissioner of Police for Greater Bombay and Ors. 1993 Cr.L.J. 1981** which has been relied upon by Shri Borulkar, learned P.P.. In that case Their Lordships were in fact considering the provisions of Section 5A of the National Security Act which are paramateria with the provisions of Section 5A of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug Offenders and Dangerous Persons Act, 1981. What is more to be noted is that in

a case **Attorney General for India etc. v/s Amratlal Prajivandas and Ors. 1995 Cri.L.J. 426, a Bench of nine Hon'ble Judges of the Apex Court** has clearly held that where an order of detention is made on more than one ground, it must be deemed that there are as many orders of detention as there are grounds, which means that each of such orders is an independent order, and therefore, when an order is supported by more than one ground, and one or more grounds are found to be vague or irrelevant, nevertheless the order can be justified on the remaining valid ground or grounds. The above observation of the Apex Court gives a death below to the submission made by the learned Advocate for the Petitioner. He has drawn our attention to a case **Kashinath Muniram Pashi @ Kashinpashi @ Kaka V/s The Commissioner of Police, Greater Mumbai, Criminal Writ Petition No.2433 of 2004** decided on 28-3-2005 wherein, the said court has held that non compliance of the request made by the Petitioner detenu to supply copies of 3 documents relied upon by the detaining authority has affected the detenu's fundamental right under Article 22(5) of Constitution of India to make effective representation and as such the detention is bad in law. Shri Kuldip Patil, learned advocate for Petitioner submitted that in the above cited case the Court had in fact given such decision after considering the above cited 2 cases viz. 1) 1995 Cri. L.J. 426, 2) 1993 Cr.L.J.1981. He therefore, submitted that relying on the said decision in Criminal Writ Petition NO.2433 of

2004, in the instant case also it be held that entire detention order is bad in law. We have carefully gone through the judgment in Criminal Writ Petition No.2433 of 2004. The facts of the said case and the facts of the case in hand, are quite different. In that case, right from beginning the Petitioner detenu had requested the concerned authorities to supply copies of 3 documents which were referred and relied upon by the detaining authority and made it clear that unless the said documents are supplied the detenu would not be able to make effective representation. While, in the case in hand, admittedly, the copies of original documents referred and relied upon by the detaining authority were supplied to the detenu along with the order and grounds of detention. However, the grievance of the detenu is that Marathi translation of the medical certificate was not proper and as such he could not make effective representation. Second important factor is that in the above cited ruling challenge to the detention order was only on the basis of violation of fundamental rights of detenu under Article 22(5) of Constitution of India as copies of 3 documents were not supplied to detenu though repeatedly asked and though in law the detaining authority was in fact bound to supply the same. So, as there was no challenge to the detention order on any other ground and as the Court was of the view that right to make effective representation was impaired totally, the Court came to the conclusion that the continued detention of the detenu is bad in law. However, in the

instant case it is clear from the petition itself that all the grounds on which the detention order was passed have been challenged by the detenu. So, having regard to sub Section 5A of the said Act it cannot be said that the entire detention order has vitiated though one of the grounds mentioned is held to be invalid. In other words, as no proper translation was provided to the detenu and consequently his fundamental right to make effective representation in respect of the C.R. is vitiated, still that violation is only in respect of one of the grounds. Once it is accepted that each ground has to be treated as a separate order, each ground has to be tested separately and independently with reference to the facts and law applicable to that particular ground. In the present case, admittedly, the detention order was passed on the basis of 2 C.Rs and 2 in-camera statements, the learned Advocate for the Petitioner has not at all pressed into service, challenge to the order on the basis of in-camera statements, so the grounds of detention on the basis of said two C.Rs are certainly legal and valid and the said grounds justify the detention order. Incidently, it must be noted that in the circumstances similar to present case, while deciding Criminal Writ Petition No.2427 of 2004 on 7-3-2005 the very Court which decided Criminal Writ Petition No.2433 of 2004, refused to quash the entire detention order though it had held that one of the grounds on which the detention order was based was not legal and valid and as a result of the same the detenu

was unable to make effective representation. So,we are of the view that decision in Cr. Writ petition No.2433 of 2004 is of no help to the present petitioner.

14. Thus taking into consideration the facts and circumstances of this case and the position of law as laid down by the Apex Court in 1995 Cr.L.J. 426 (Supra), we have absolutely no hesitation to hold that thoughthe impugned order of detention is invalid on first two grounds based on C.Rs, the same cannot be said to be illegal, invalid or bad in law, as it finds support from other two grounds based on in camera statements of witneses. Consequently, there is no need to quash the same and to release the petitioner.

15. In this view of the matter, the petition is dismissed.

. Rule is discharged.

(S.R.SATHE,J.) (S.B.MHASE,J.)

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CORAM:S.B.MHASE &

S.R.SATHE, JJ

DATED: 9th September 2005

P.C.:-

. For the reasons recorded separately in the Oral Judgment, the Court passes the following order :-

. In this view of the matter, the writ petition is dismissed.

. Rule is discharged.

(S.R.SATHE,J.) (S.B.MHASE,J.)